



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0386]

RIN 1625-AA08

Special Local Regulation; Kelley's Island Swim, Lake Erie;  
Kelley's Island, Lakeside OH

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is amending its regulations in 33 CFR part 100 by adding a Special Local Regulation within the Captain of the Port Detroit Zone. This regulation is intended to regulate vessel movement in portions of Lake Erie during the annual Kelley's Island Swim. This special local regulated area is necessary to protect swimmers from vessel traffic.

DATES: This final rule is effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Documents mentioned in this preamble are part of docket number USCG-2012-0386. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the

"SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LTJG Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418-6040, e-mail [Benjamin.B.Nessia@uscg.mil](mailto:Benjamin.B.Nessia@uscg.mil). If you have questions on viewing material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule

#### A. Regulatory History and Information

On June 5, 2012, the Coast Guard published an NPRM entitled Special Local Regulation; Kelley's Island Swim, Lake Erie; Kelley's Island, Lakeside, OH in the Federal Register (77 FR 33130). We did not receive any comments in response to the proposed rule. No public meeting was requested and none was held.

## B. Basis and Purpose

Each year an organized swimming event takes place in Lake Erie in which individuals swim the four miles between Lakeside and Kelley's Island, OH. The Captain of the Port Detroit has determined that swimmers in close proximity to watercraft and in the shipping channel pose extra and unusual hazards to public safety and property. Thus, the Captain of the Port Detroit has determined that establishing a Special Local Regulation around the location of the race's course will help ensure the safety of persons and property at these events and help minimize the associated risks.

## C. Discussion of Comment, Changes and the Final Rule

To mitigate the dangers presented by a large number of swimmers crossing a shipping channel during a four mile competition, the Captain of the Port Detroit has determined that establishing a Special Local Regulation is necessary. Thus, the Coast Guard is amending 33 CFR 100 by adding § 100.921 to establish a permanent Special Local Regulation. The affected area encompasses all the waters of Lake Erie between Lakeside, OH and Kelley's Island, OH bound by a line extending from a point on land at the Lakeside dock at positions 41° 32' 51.96"N; 082° 45' 3.15"W and 41° 32' 52.21"N; 082° 45' 2.19"W and a line extending to Kelley's Island dock to positions 41° 35' 24.59"N; 082° 42' 16.61"W and 41° 35' 24.44"N; 082° 42' 16.04"W (Datum:

NAD 83). The precise times and dates of enforcement for this regulated area will be determined annually.

The Captain of the Port Detroit will use all appropriate means to notify the public when the Special Local Regulation in this rule will be enforced. Such means may include publication in the Federal Register, Broadcast Notice to Mariners, Local Notice to Mariners, or, upon request, by facsimilie (fax). Also, the Captain of the Port will issue a Broadcast Notice to Mariners notifying the public if enforcement of the affected area in this section is cancelled prematurely.

No comments were received in response to and there are no changes to the rule as proposed by the NPRM published June 5, 2012.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and

procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The regulated area established by this rule will be relatively small and enforced for relatively short time. Also, the regulated area is designed to minimize its impact on navigable waters.

Furthermore, this regulated area has been designed to allow vessels to transit the area affected by this regulation, provided vessel operators meet the requirements set forth by this rule. Thus, restrictions on vessel movements within any particular area are expected to be minimal. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of this regulated area.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the above portion of Lake Erie, Lakeside, OH between 7:00 a.m. and 11:00 a.m. on the dates of the event, which will be determined annually. The special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for 4 hours on the day of the event, and vessels wishing to transit through the affected area may do so with caution. The Coast Guard will give notice to the public via a local Notice to Mariners that the regulation is in effect. Additionally, the COTP will suspend enforcement of the special local regulation if the event for which the special local regulation is established ends earlier than the time expected.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its

provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 7. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 8. Civil Justice Reform

This rule meets applicable standards in sections 3 (a) and 3 (b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.



#### 10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between Federal Government and Indian tribes.

#### 11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure

2-1, paragraph (34)(h) of the Instruction and during the annual permitting process for this dragon boat racing event an environmental analysis will be conducted to include the effects of this Special Local Regulation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.921 to read as follows:

§ 100.921 Special Local Regulation; Kelley's Island Swim, Lake Erie, Lakeside, OH.

(a) Regulated area. The regulated area includes all U.S. navigable waters of lake Erie, Lakeside, OH, contained by a line connecting the following points: two points on land at the Lakeside dock, 41° 32' 51.96"N/ 082° 45' 3.15"W and 41° 32' 52.21"N/ 082° 45' 2.19"W, and two points on Kelley's Island at the Kelley's Island Dock, 41° 35' 24.59"N/ 082° 42' 16.61"W, and 41° 35' 24.44"N/ 082° 42' 16.04"W (Datum: NAD 83).

(b) Special Local Regulations. The regulations of §100.901

apply. Vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant for swimmers. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by event representatives during the event.

(c) Enforcement period. These Special Local Regulations will be enforced annually. The exact enforcement date and times will be published annually in the Federal Register via a Notice of Enforcement.

Dated: November 19, 2012

J.E. OGDEN  
Captain, U.S. Coast Guard  
Captain of the Port Detroit

[FR Doc. 2012-29134 Filed 11/30/2012 at 8:45 am; Publication Date: 12/03/2012]